

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

PB&J SOFTWARE, LLC,

Civil Action No. 09-CV-00206 JMR/SRN

Plaintiff,

ANSWER AND COUNTERCLAIMS

v.

**CODE 42 SOFTWARE, INC.; CUCKU,
INC.; Q POINT TECHNOLOGY, INC.;
UNIVERSE POINT, L.L.C.; and LOGMEIN,
INC.,**

(JURY TRIAL DEMANDED)

Defendants.

Defendant, Code 42 Software, Inc. submits this Answer and Counterclaims to the First Amended Complaint of Plaintiff, PB&J Software, LLC.

ANSWER

Except as otherwise admitted, qualified, or explained herein, Code 42 Software, Inc. (“Code 42”) denies the averments of Plaintiff’s Complaint. Referring specifically to the numbered paragraphs of Plaintiff’s Complaint, Code 42 further states and avers as follows:

JURISDICTION AND VENUE

1. Code 42 admits only that Plaintiff brings this action for patent infringement under Title 35 of the United States Code and that Plaintiff seeks injunctive relief and damages. Answering further, Code 42 denies any such averments of patent infringement.

2. Code 42 admits only that subject matter jurisdiction in this Court is pleaded, in that Plaintiff brings this action for patent infringement under the United States patent statutes. Answering further, Code 42 denies any such averments of patent infringement.

3. Code 42 admits only that venue is proper in this judicial district for Plaintiff's claims of patent infringement, but denies the cited legal basis therefor.

4. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 4 of the Complaint, and therefore denies the same.

5. Code 42 denies that its principal place of business is as listed in "Maples, Minnesota," but admits the remaining averments of Paragraph 5 of the Complaint.

6. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 6 of the Complaint.

7. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 7 of the Complaint.

8. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 8 of the Complaint.

9. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 9 of the Complaint.

10. Answering only for itself, Code 42 admits only that its CrashPlan product may be made, used, offered for sale, or sold in Minnesota. Answering further, Code 42 is without knowledge or information sufficient to form a belief about the truth of the remaining averments of Paragraph 10 of the Complaint, specifically with respect to the other Defendants' products. Code 42 denies the remaining averments of Paragraph 10 of the Complaint.

11. Answering only for itself, Code 42 admits only that Code 42 does business in Minnesota sufficient for the Court to exercise personal jurisdiction over Code 42. Code 42 denies the remaining averments of Paragraph 11 of the Complaint, and Code 42 specifically denies any such averments of patent infringement.

ALLEGATIONS OF INFRINGEMENT OF U.S. PATENT NO. 7,310,736

12. Code 42 hereby realleges and incorporates by reference its averments contained in Paragraphs 1-11 above as if fully set forth herein.

13. Code 42 admits only that Plaintiff brings this action for patent infringement under Title 35 of the United States Code. Answering further, Code 42 denies any such averments of patent infringement.

14. Code 42 is without sufficient knowledge to admit or deny the averments of Paragraph 14 of the Complaint, and therefore puts Plaintiff to strict proof thereof.

15. Code 42 denies the averments of Paragraph 15 of the Complaint.

16. Code 42 denies the averments of Paragraph 16 of the Complaint.

17. Code 42 denies the averments of Paragraph 17 of the Complaint.

18. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 18 of the Complaint, and therefore denies the same.

19. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 19 of the Complaint, and therefore denies the same.

20. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 20 of the Complaint, and therefore denies the same.

21. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 21 of the Complaint, and therefore denies the same.

22. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 22 of the Complaint, and therefore denies the same.

23. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 23 of the Complaint, and therefore denies the same.

24. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 24 of the Complaint, and therefore denies the same.

25. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 25 of the Complaint, and therefore denies the same.

26. Answering only for itself, Code 42 denies the averments of Paragraph 26 of the Complaint.

27. Answering only for itself, Code 42 denies the averments of Paragraph 27 of the Complaint.

28. Answering only for itself, Code 42 denies the averments of Paragraph 28 of the Complaint.

29. Answering only for itself, Code 42 denies the averments of Paragraph 29 of the Complaint.

30. Code 42 is without knowledge or information sufficient to form a belief about the truth of the averments of Paragraph 30 of the Complaint, and therefore denies the same.

31. Answering only for itself, Code 42 denies the averments of Paragraph 31 of the Complaint.

AFFIRMATIVE DEFENSES

In further answer to Plaintiff's Complaint, Code 42 hereby pleads and affirmatively sets forth the following defenses, undertaking the burden of proof on such defenses only to the extent required by law.

DEFENSE 1
(NON-INFRINGEMENT)

32. Code 42 has not infringed any valid and enforceable claim of the '736 patent, whether directly, indirectly, literally, or under the doctrine of equivalents.

33. Code 42 has not willfully infringed any valid and enforceable claim of the '736 patent.

DEFENSE 2
(INVALIDITY UNDER SECTIONS 101, 102, AND 103 OF TITLE 35)

34. Each of the asserted claims of the '736 patent is, upon information and belief, invalid for failure to comply with one or more of the conditions of patentability specified in Title 35 of the United States Code, Sections 101, 102, and/or 103.

DEFENSE 3
(INVALIDITY UNDER SECTION 112 OF TITLE 35)

35. One or more of the asserted claims of the '736 patent is, upon information and belief, invalid for failure to comply with one or more of the conditions of patentability specified in Title 35 of the United States Code, Section 112.

DEFENSE 4
(FAILURE TO STATE A CLAIM)

36. The First Amended Complaint fails to state a claim against Code 42 upon which relief can be granted.

COUNTERCLAIMS

Counterclaim Plaintiff, Code 42 Software, Inc., as against Counterclaim Defendant PB&J Software, L.L.C., hereby avers as follows and demands a jury trial on all issues still triable:

PARTIES

1. Counterclaim Plaintiff, Code 42 Software, Inc. (“Code 42”), is a Minnesota corporation with its principal place of business at 12 South 6th Street, #1242, Minneapolis, Minnesota 55402.

2. Counterclaim Defendant, PB&J Software, L.L.C. (“PB&J”), is, upon information and belief, a Missouri limited liability company with its principal place of business at 11880 Conway Road, St. Louis, MO 63131.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this Counterclaim pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202 and 28 U.S.C. §§ 1331, 1338(a), (b), and 1367(a). As demonstrated by the Complaint originally filed by the Counterclaim Defendant and more recently by its First Amended Complaint in this action, together with Code 42’s above-stated Answer, an actual and justiciable controversy exists between Code 42 and PB&J regarding PB&J’s averments of infringement and counter averments of non-infringement, invalidity, and unenforceability of the ‘736 patent.

4. Counterclaim Defendant PB&J is subject to personal jurisdiction in this Court, as evidenced by its consent to jurisdiction in commencing this action.

5. Venue for these counterclaims is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1391(c).

COUNTERCLAIM I
(NON-INFRINGEMENT)

6. Code 42 hereby realleges and incorporates by reference the averments contained in its Answer and in Paragraphs 1-5 of its Counterclaims, as if set forth fully herein.

7. Code 42 is entitled to a judicial declaration that Code 42 has not infringed any valid and enforceable claim of the '736 patent, whether directly, indirectly, literally, or under the doctrine of equivalents.

COUNTERCLAIM II
(INVALIDITY)

8. Code 42 hereby realleges and incorporates by reference the averments contained in its Answer contained in Paragraphs 1-7 of its Counterclaims, as if set forth fully herein.

9. Code 42 is entitled to a judicial declaration that the '736 patent is invalid for failure to comply with one or more provisions of Title 35 of the United States Code, such as Sections 101, 102, 103, and/or 112.

DEMAND FOR JURY TRIAL

10. Code 42 hereby demands a trial by jury on all issues so triable, pursuant to Fed. R. Civ. P. 38.

DEMAND FOR RELIEF

WHEREFORE, Code 42 Software, Inc. asks this Court for all appropriate relief, including:

A. Entering judgment dismissing Plaintiff's First Amended Complaint with prejudice in its entirety;

B. Entering Judgment for Code 42 declaring the rights of the parties to this controversy and finding that the claims of the asserted patent are not infringed by any of the presently accused Code 42 products;

C. Entering Judgment for Code 42 declaring the rights of the parties to this controversy and finding that the claims of the asserted patent are invalid or unenforceable against Code 42.

D. Awarding to Code 42 its costs in defending this matter and pursuing its counterclaims; and

E. Awarding to Code 42 such other and further relief as is just and proper, including but not limited to attorneys' fees and expenses in accordance with 35 U.S.C. § 285 (or other applicable law), if warranted.

Dated: June 16, 2009

Respectfully submitted,

By: s/ Kevin D. Conneely

Kevin D. Conneely (#192703)

Erik M. Drange (#0344138)

LEONARD, STREET AND DEINARD

Professional Association

150 South Fifth Street, Suite 2300

Minneapolis, Minnesota 55402

Telephone: 612.335.1829

Facsimile: 612.335.1657

ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIM PLAINTIFF, CODE 42
SOFTWARE, INC.